

REMARKS

Applicant has carefully reviewed the Office Action mailed on February 2, 2010. Applicant respectfully traverses (and does not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. Claims 1, 3-5, and 10-16 are presented for examination.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 3-5, and 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zadno-Azizi et al. in U.S. Patent No. 6,022,336 in view of Cragg et al. in U.S. Patent No. 6,146,373 in view of Banka in U.S. Patent No. 4,299,226. Applicant respectfully traverses the rejection.

Claim 1 recites that a portion of the outer wall surface of the second tubular member is bonded to a portion of the inner wall surface of the first tubular member.

The Office Action indicated that “Zadno-Azizi fails to disclose that the outer wall of the second tubular member is bonded to the inner wall of the first tubular member.”

The Office Action went on to state, however, that “Zadno-Azizi does disclose that the configuration shown in Fig. 2 is an ideal condition that maximizes the lumen pathways (col. 7, lines 60-65, col. 8, lines 46-48)” and, because of this, “it would have been obvious to one of ordinary skill in the art to fix the tubular members together in the disclosed orientation to maximize the lumen openings to ensure that the viscous fluid can flow through the lumen and the flow rates can be reliably determined.”

It appears as though the position taken in the Office Action is that if the configuration shown in Figure 2 is ideal, then it would be obvious to fix the tubular members in this ideal configuration. This interpretation is not consistent with the specification of Zadno-Azizi et al.

As indicated in the last reply to the Office, Zadno-Azizi et al. expressly indicate that the orientation shown is “for ease of illustration only” and that the catheters 20/22/24 are moveable relative to one another (i.e., are not bonded) because “in actual practice the positions of the various catheters 20, 22, 24 relative to one another may vary due to pressures, flow rates, etc.” (Emphasis added.) Thus, not only does Zadno-Azizi et al. fail to teach or suggest that bonding the catheters 20/22/24 in the manner suggested by the Office Action, the specification of Zadno-

Azizi et al. appears to teach away from such an arrangement as Zadno-Azizi et al. indicates that the relative position of catheters 20/22/24 is not fixed (e.g., catheters 20/22/24 are not bonded) because their positions can vary. Because of this, the passage cited in the Office Action (i.e., column 8, lines 46-48) fails to render the claimed invention obvious.

The Office Action went on to apply Cragg et al., indicating that “[t]he embodiment of Fig. 9 may include means for adjusting the longitudinal position of one of the lumens with respect to the other lumen (col. 11, lines 30-32) ...” and that somehow the combination of Zadno-Azizi et al. and Cragg et al. renders the claimed invention obvious. (Emphasis added.) Again, the cited passage of Cragg et al. appears to bear on longitudinal adjustment or movement of lumens relative to one another rather than a portion of the outer wall surface of the second tubular member that is bonded to a portion of the inner wall surface of the first tubular member. Because of this, Applicant respectfully submits that Cragg et al. does not overcome the shortcomings of Zadno-Azizi et al. Accordingly, Applicant respectfully submits that claim 1 is patentable over the combination of Zadno-Azizi et al. and Cragg et al., to the extent that such a combination is even possible.

Finally, the Office Action additionally applied Banka. Bank does not appear to overcome the shortcomings of Zadno-Azizi et al. and Cragg et al. Consequently, Applicants respectfully submit that claim 1 is patentable over the combination of Zadno-Azizi et al., Cragg et al., and Banka, to the extent that such a combination is even possible. Because claims 3-5 and 10-14 depend from claim 1, they are also patentable for the same reasons as claim 1 and because they add significant elements to distinguish them further from the cited art.

Allowable Subject Matter

Claims 15-16 are not rejected in the Office Action and are presumed to be allowable. In addition, Applicant notes that for the reasons set forth above, claim 1 is believed to be patentable over the cited art. Because claims 15-16 depend from claim 1, they are also patentable for the same reasons as claim 1 and because they add significant elements to distinguish them further from the cited art.

Conclusion

Reconsideration and further examination of the rejections are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Joseph C. Eder

By his Attorney,

Date: _____

4-19-2010



J. Scot Wickhem, Reg. No. 41,376
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2420
Telephone: (612) 677-9050
Facsimile: (612) 359-9349